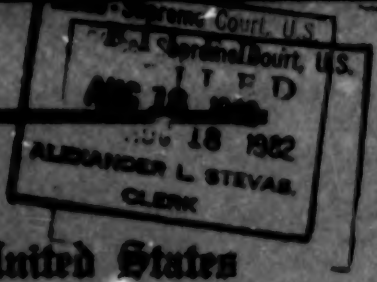
NO. 81-2389



IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ASAR M. STEPAK,

Appellant,

vs.

RUTGERS MEDICAL SCHOOL, A DIVISION OF THE COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY, RUTGERS, THE STATE UNIVERSITY and THE STATE OF NEW JERSEY, jointly, severally and/or in the alternative,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEES TO DISMISS OR AFFIRM

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NO. 81-2389

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ASAR M. STEPAK,

Appellant,

vs.

RUTGERS MEDICAL SCHOOL, A DIVISION OF THE COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY, RUTGERS, THE STATE UNIVERSITY and THE STATE OF NEW JERSEY, jointly, severally and/or in the alternative,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEES RUTGERS MEDICAL SCHOOL OF THE COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY AND THE STATE OF NEW JERSEY TO DISMISS OR AFFIRM

Pursuant to Rule 16.1(b) and (d) of the Court, the Attorney General of New Jersey, on behalf of appellees Rutgers Medical School of the College of Medicine and Dentistry of New Jersey and the State of New Jersey hereby moves to dismiss the appeal or affirm the judgment of the Supreme Court of New Jersey on the ground that the constitutional questions raised by appellant are so insubstantial as to obviate further argument.

Counter-Statement of the Case

In September 1974, Asar M. Stepak (hereafter the appellant) applied for admission to the Rutgers Medical School, a component unit of the College of Medicine and Dentistry of New Jersey (hereafter the "College" or "CMDNJ-RMS"), for admission to its 1975 entering class (Ra*4).

Admission to CMDNJ-RMS involves a review of both an applicant's academic background and a ". . . careful appraisal of personalities of the applicants for qualities which characterize capable practitioners of medicine" (Ra2). In addition, the Admissions Committee is interested in an applicant's patient care experience, leadership qualities, community activities and other subjective measures of a candidate's likelihood of becoming a skillful physician (*Ibid.*). Thus, admission to CMDNJ-RMS involves the review of a variety of objective and subjective factors, and academic performance as measured by undergraduate grades and MCAT scores is only one factor (*Ibid.*).

With regard to minority applications, over the past several years, CMDNJ-RMS has accepted a varying number of minority applicants. The class which entered in 1978 includes 18 blacks and five Hispanics out of 108 seats. The class which entered in 1977 contains 17 blacks and seven Hispanics. The 1976 class has 17 blacks and three Hispanics. The 1975 class, the year for which the plaintiff applied, included 18 blacks and four Hispanics (Ra2 to Ra3). Thus, the trial court concluded that CMDNJ-RMS

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* This designation refers to the appellees' appendix.

did not maintain a quote or otherwise reserve a specific number of seats for minority applicants (Aa*10 to Aa11).

However, in weighing the factors considered during the review process, such as academic performance and leadership potential, the College does take race into consideration. For example, the College recognizes that a minority applicant with a strong record of accomplishment may have demonstrated a level of perseverance and ability not reflected in raw test scores (Ra3). Thus, the Admissions Committee has determined that consideration of race assists it in evaluating the individual attributes of an applicant and selecting a student body with the most promise and diversity (Ra3).

Moreover, the College, which is centered in a community with a large minority population and attempts to serve the needs of that population, has a strong commitment to affirmative action. The Board of Trustees has determined that there should be equal opportunity to admission without regard to, among other things, race or color. In that regard, it is instructive to note that in 1970 a task force of the Association of American Medical Colleges issued a report which noted that blacks constituted 2.2% of the country's doctors and 2.8% of the medical students (Ra3). That report further noted that among the factors causing such a situation were financial and educational obstacles to minorities, including cultural bias in the MCAT. *Ibid.* If academic performance as measured solely by test scores and MCAT scores were the single criterion for acceptance, many minority applicants would be eliminated. Thus, the Admissions Committee determined that consideration of race further assists it in compensating for cultural bias found by the Association of Americal Medical Colleges in MCAT scores (Ra3).

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* This designation refers to the appellant's appendix.

Of further concern to the Admissions Commitee is that with only 108 available seats and over 2400 applicants it is impossible to avoid rejecting qualified applicants. Thus, the goal of the Admissions Committee is to ensure that all factors which relate to an individual candidate's qualifications to practice medicine are considered before a decision is made (Ra4).

For the 1975 academic year, the year for which the appellant applied, the admissions process consisted of a series of steps in which applicants were screened, interviewed and ranked against each other. During the screening stage, the Admissions Officer and Admissions Committee reviewed each of the more than 2000 applications and invited for an interview those applicants who demonstrated achievement in all categories considered by the College (Ra4). Invited applicants were then interviewed by one member of the Admissions Committee. Immediately after an interview, the interviewer was required to prepare a written evaluation which became an additional document relied upon by the Admissions Committee in ranking an applicant (Ra5). If either was dissatisfied, an applicant or an interviewer could request a second interview with a different interviewer (*Ibid.*). After an interview, the Admissions Committee reviewed and ranked all applicants against each other. Such ranking was achieved by scoring an application on a scale of one to ten with ten representing the top score. In 1975, no applicant with a score of less than 8.5 was accepted (Ra5 to Ra6).

The appellant's application was one of those selected by the Admissions Officer for an automatic interview because of his high academic achievement, and it was transmitted to the Admissions Committee for an interview (Ra4). He was interviewed on January 19, 1975 and, on February 13, 1975, requested a second interview so he could ". . . ex-

plain more fully certain aspects of my application." On February 21, 1975, he received a second interview before a different interviewer (Ra5). The Admissions Committee then reviewed his application and interview results, ranked his application in comparison to the other applicants, and assigned him a benchmark score of only 6.0 (Ra6). Thereafter, he was notified that his application was rejected (*Ibid.*).

It is instructive to note that even if every minority applicant were removed from the accepted and alternate lists, the appellant would still not have been accepted. In 1975, there were 153 people placed on the alternate list. Of those people, 135 were non-minority and 18 were minority applicants. In addition to the applicants on the alternate list, there were 562 candidates who scored higher than the plaintiff, including 46 minority applicants, and who were rejected without placement on the alternate list (Ra6). Thus, the trial court found that 715 applicants had benchmark scores higher than the appellant and even if the College accepted no minority applicants, the appelant's application would not have been reached.

On January 8, 1982, the Superior Court of New Jersey, Appellate Division, affirmed the determination of the trial court. It stated in part that it had ". . . considered the contentions and all of the arguments advanced by the plaintiff in support of them. We are satisfied that all issues of fact and law raised are clearly without merit."

On March 27, 1982, the Supreme Court of New Jersey denied the appellant's petition for certification.

On May 14, 1982, the appellant filed a notice of appeal with this Court pursuant to 28 U.S.C. §1257(2). Appellees have filed the within motion to dismiss or, alternatively, to affirm on the grounds that no substantial federal question is raised by the appeal.

ARGUMENT

This case presents no substantial constitutional question not previously decided by this Court.

The appeal should be dismissed or the judgment of the Superior Court of New Jersey, Appellate Division, should be affirmed because the constitutional questions raised by appellant are so insubstantial as to obviate any further argument.*

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* The appellant has improperly brought this matter by appeal pursuant to 28 U.S.C. §1257(2) rather than by petition for certiorari pursuant to 28 U.S.C. §1257(3). Under 28 U.S.C. §1257(2), a final judgment of a state's highest court may be reviewed by appeal ". . . where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." This matter began as a 13 count complaint in state court for compensatory and punitive damages for discrimination in the rejection of his application for admission to medical school. Appellant sought relief under 42 U.S.C. §1983, §2000c, the due process and equal protection clauses of the Constitution of the United States, New Jersey common law, and various provisions of the Constitution of New Jersey. The appellant did not challenge any state statute as repugnant to the Constitution of the United States and the state courts did not expressly decide such validity.

28 U.S.C. §1257(3) provides for review of a state court judgment by writ of certiorari ". . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States." As noted above, appellant suggests he was discriminated against in violation of federal statute and the Constitution of the United States. It is plain, therefore, that any right of review he possesses is by writ of certiorari rather than by appeal. See *Garrity* v. *New Jersey*, 385 U.S. 493, 496 (1967).

In *University of California Regents* v. *Bakke*, 438 U.S. 265 (1977), this Court established the standards for review of a university's admissions policies, and determined that the "two track" admissions process under review in that case was unconstitutional. Under that program, minority and non-minority applications were reviewed separately. The admissions committee ". . . did not rate or compare the special candidates against the general candidates . . ." (*Id.* at 275) and non-minority applicants competed for fewer seats in the entering class than the minority candidates (*Id.* at 289). Mr. Justice Powell, announcing the judgment of the Court, stated that

> . . . No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, *they are never afforded the chance to compete with applicants from the preferred groups* for the special admission seats. *At the same time, the preferred applicants have the opportunity to compete for every seat in the class.* [*Id.* at 319; emphasis supplied].

Thus, stated Mr. Justice Powell, the "principal evil" of the University of California program was the ". . . denial to respondent of this individualized consideration without regard to race. . . ." (*Id.* at 318 n. 52).

On the other hand, Mr. Justice Powell further observed ". . . [s]o long as the university proceeds on an individualized, case-by-case basis, there is *no warrant for judicial interference in the academic process. . . .*" (*Id.* at 319 n. 53; emphasis supplied). In a properly administered program, ". . . race or ethnic background may be deemed a 'plus' in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats" (*Id.* at 317).

He described the beneficial features of such an individualized program as follows:

> . . . The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important. In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight. . . . [*Id.* at 317; emphasis supplied].

See opinion of Justices Brennan, White, Marshall and Blackmun, concurring in the judgment in part and dissenting ("In our view, Title VI . . . does not bar the preferential treatment of racial minorities as a means of remedying past societal discrimination to the extent that such action is consistent with the Fourteenth Amendment. . . .") (*Id.* at 328). *Cf. United Steelworkers, etc.* v. *Weber,* 443 U.S. 193, 207-208 (1979) ("We therefore hold that Title VII's prohibition in §703(a) and (d) against racial discrimination does not condemn all private, voluntary, race-conscious affirmative action plans.") Thus, a majority of the Court concluded that, especially when a university proceeds on an individualized, case-by-case basis, race can be an appropriate factor in a university's admissions process.

The determination of the state courts in this matter simply represented the application of undisputed facts to those settled standards established by this Court. As noted earlier, the Association of American Medical Colleges issued a report in which it noted that in 1970 blacks constituted only 2.2% of the country's doctors and 2.8% of the medical students and that among the reasons for such a shortage was cultural bias in testing procedures used in the admissions process (Ra3). The Board of Trustees of the College of Medicine and Dentistry of New Jersey has, therefore, committed the College and its component units, such as the Rutgers Medical School, to a policy of affirmative action in admissions. As already stated, CMDNJ-RMS has acknowledged that race is among the factors taken into consideration in the admissions process.

Unlike the admissions procedures at the University of California, however, CMDNJ-RMS gives individualized, case-by-case consideration to an applicant's qualifications and minority and non-minority applicants compete against each other for the same number of seats in an entering class. In other words, a determination is not reached solely on the basis of a candidate's test score or race. Every application is thoroughly reviewed and compared to the entire pool of applicants and all relevant factors in an applicant's background, such as drive and determination or leadership qualities, are considered before a determination is reached. Recognizing that not all qualified applicants can be accepted, the goal of the Admissions Committees at CMDNJ-RMS is to consider all factors relevant to an individual's qualifications to practice medicine before a determination is made (Ra4).

More specifically, as noted earlier, for the 1975 entering class, the admissions process consisted of the follow-

ing: Upon receipt of incoming applications, the Admissions Officer reviewed them and invited for an interview any candidate who demonstrated high achievement in all categories considered by the College. If an applicant was not automatically invited for an interview, the Admissions Officer transmitted his or her application to the Admissions Committee for further screening. It is instructive to note, moreover, that unlike the University of California CMDNJ-RMS did not have a minority screening committee and all further processing of an application was by the Admissions Committee (Ra4 to Ra6). Thus, CMDNJ-RMS did not use a two-track admissions system, such as the one determined illegal by the Court in *Bakke*.

Upon receipt of an application, one member of the Committee would first review it. If that member recommended an interview, then such an interview would be granted. On the other hand, if that member recommended against an interview, the application was presented to the entire committee and, if the committee agreed, the application was rejected (Ra4 to Ra5).

As to applicants who received an interview, such interviews were conducted by a member of the Admissions Committee who attempted to assess both the objective and subjective variables considered by the Admissions Committee. Both an interviewer and an applicant had the option to request a second interview if either was dissatisfied (Ra5).

Upon interviewing all candidates selected for an interview, the Admissions Committee reviewed and ranked all such applicants. In that regard, three members of the Admissions Committee reviewed an application and rated it on a scale of one to ten, with ten representing the top score. Those three scores were then averaged with a

similar ranking assigned by an interviewer and the result was an applicant's benchmark score. Applicants with a benchmark score of 8.5 were recommended for acceptance. Later during the year, however, when it became apparent that the school did not have enough room for all such applicants, those whose names had not been reached were placed on an alternate list. In 1975, every applicant with a benchmark score of 8.5 or less was rejected (Ra5 to Ra6).

In the present case, the appellant was among those applicants who because of his outstanding undergraduate record was automatically invited for an interview by the Admissions Officer. That interview was conducted in January 1975 and, at his request, a second interview was conducted with a different interviewer in February 1975. Thereafter, his application was ranked by three members of the Admissions Committee together with similar rankings by his interviewers and he received a benchmark score of 6.0. As noted earlier, every applicant with a benchmark score of 8.5 or less was rejected by the College. Accordingly, the appellant's application was rejected, and the state court properly determined that appellant competed with all other minority and non-minority applicants for all available seats in the entering class.

Clearly, therefore, this case merely involves the application of undisputed facts to the principles set forth by the Court in *Bakke* and presents for review no substantial constitutional question not previously decided by the Court.

The appellant suggests this case involves the constitutionality of the Medical and Dental Education Act of 1970, N.J.S.A. 18A:64G-1 *et seq.*, which established the College

of Medicine and Dentistry of New Jersey* (Abi** to Abiv). It is well settled, however, that for this Court to have jurisdiction to deal with a particular issue it must have first been presented to the state courts deciding the matter. *Street* v. *New York*, 394 U.S. 576, 581-582 (1969). An issue ". . . must have been definitely brought to the court's attention. . . ." *Live Oak Water Users' Ass'n* v. *Railroad Commission*, 269 U.S. 354, 357 (1926). The Court ". . . will not pass upon the constitutionality of a state statute before the state courts have had an opportunity to do so. . . ." *Adler* v. *Board of Education of City of New York*, 342 U.S. 485, 496 (1952). See also *Tacon* v. *Arizona*, 410 U.S. 351, 352 (1973).

In the present case, as noted earlier, the complaint does not challenge the constitutionality of the statute establishing the College. Rather, the appellant suggested that appellees engaged in discriminatory acts in violation of federal statutes, the Constitution of the United States, New Jersey common law and the New Jersey Constitution. In *Phillips* v. *United States*, 312 U.S. 246, 252 (1941), the Court observed that ". . . an attack on lawless exercise of authority in a particular case is not an attack upon the constitutionality of a statute conferring the authority even though a misreading of the statute is invoked as justification. . . ." See *Beck* v. *Washington*, 369 U.S. 541, 549-550 (1962) (". . . Although both opinions of the Washington Supreme Court discuss the *interpretation* of §10.28.030, neither considered that question in light of the equal protection argument for that argument was

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*Under P.L. 1981, c. 325, §2, among other things, the College was redesignated as the University of Medicine and Dentistry of New Jersey.

**This designation refers to the appellant's jurisdictional statement.

never properly presented to the court in relation to the statute . . .") (emphasis in original); *Lynch* v. *New York*, 293 U.S. 52, 54 (1934) (". . . Nor can claim of jurisdiction be sustained by reference to briefs and statements which are not part of the record"). Thus, the appellant did not present the issue of the constitutionality of the statute to the state court, and it is plain that this Court lacks jurisdiction to review that issue.

The appellant seems to further suggest that the state court denied him a right to a "trial de novo" when it granted the College's motion for summary judgment (Abii). In *Boddie* v. *Connecticut*, 401 U.S. 371, 378 (1971), the Court outlined the requirements of due process as follows:

> *Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits.* A state can, for example, enter a default judgment against a defendant who, after adequate notice; fails to make a timely appearance [citation omitted] or who, without justifiable excuse, violates a procedural rule requiring the production of evidence necessary for orderly adjudication [citation omitted]. What the Constitution does require is 'an *opportunity* . . . granted as a meaningful time and in a meaningful manner' [citation omitted] 'for [a] hearing appropriate to the nature of the case [citation omitted]. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.' . . . In short, 'within the limits of practicability' [citation omitted], a state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the due process clause . . . [first emphasis supplied].

See, *e.g.*, *Minneapolis & St. L.R. Co.* v. *Bombolis*, 241 U.S. 211, 217 (1916). (". . . The 7th Amendment applies only to proceedings in courts of the United States, and does not in any manner whatever govern or regulate trials in state courts, or the standards which must be applied concerning the same. . . ."). In the present case, the appellant failed to present for review any material issue of fact. In support of its motion for summary judgment, the College filed an affidavit of its admissions officer setting forth the admissions process and the reasons for the appellant's rejection. On August 8, 1980 rather than decide the motion immediately, the trial court reserved decision and provided the appellant an additional opportunity by affidavit or otherwise to demonstrate the existence of a material fact. On a second occasion, after the court had actually rendered an oral opinion granting summary judgment, the court vacated that oral determination and provided the plaintiff an additional two weeks to submit affidavits or documentation in opposition to the College's motion. Indeed, it should be noted that on July 16, 1980, the trial court had reinstated the appellant's complaint which had been dismissed for his failure to appear at trial (Ra8). Thus, after reinstating his complaint, the trial court provided the appellant two separate opportunities to submit facts in opposition to the College's motion. Plainly, the court provided appellant a meaningful opportunity to be heard at a meaningful time and did not deny him any right to any "trial de novo".

Therefore, it is clear that the present appeal presents for review no substantial constitutional question not previously decided by this Court, and the appeal should be dismissed or, in the alternative, the judgment affirmed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the within appeal should be dismissed for want of a substantial federal question which would require plenary consideration by this Court or alternatively the final judgment of the Superior Court of New Jersey, Appellate Division, should be affirmed.

Respectfully submitted,

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Dated: August 16, 1982.

[APPENDICES FOLLOW]

APPENDIX A

Certification in Support of Motion for Summary Judgment

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—MIDDLESEX COUNTY
DOCKET No. L-41916-76
Civil Action

ASAR M. STEPAK,

Plaintiff,

vs.

COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY, RUTGERS MEDICAL SCHOOL and STATE OF NEW JERSEY,

Defendants.

MARY J. GREEN, being of full age and pursuant to R. 1:4-4(b) hereby certifies as follows:

1. I am the Admissions Officer for the College of Medicine and Dentistry-Rutgers Medical School ("CMDNJ-RMS"). I have been the Admissions Officer since July 1970 and have personal knowledge of and am responsible for the administration of the admissions process for CMDNJ-RMS, including the applications of Asar M. Stepak, the present plaintiff.

Appendix A

2. The specific academic requirements for admission to CMDNJ-RMS are as follows: 90 credits of academic work, exclusive of R.O.T.C. and physical education, including two years of biology, one year each of general chemistry, organic chemistry and physics, including lab in each. In addition, the Medical College Admissions Test (MCAT) is required. The CMDNJ-RMS catalog further states that admission is ". . . based not only on academic achievement, but also on a careful appraisal of personalities of the applicants for qualities which characterize practitioners of medicine."

3. Moreover, in reviewing the qualifications of an applicant, CMDNJ-RMS has always considered an applicant's entire background. In addition to academic performance, the Admissions Committee is interested in an applicant's patient care experience, leadership qualities, community activities and other subjective measures of a candidate's likelihood of becoming a skillful physician. Thus, admission to CMDNJ-RMS involves a variety of objective and subjective factors and academic performance as measured by undergraduate grades and MCAT scores is only one factor.

4. With regard to minority applications, CMDNJ-RMS has never used a quota for minority applicants. This is illustrated by the varying number of minority applicants accepted by the School over the last several years. Specifically, the class which entered in 1978 now consists of 18 blacks and five Hispanics. The class which entered in 1977 now consists of 17 blacks and seven Hispanics. The class which entered in 1976 now consists of 17 blacks and three Hispanics. The class which entered in 1975, the year for which Mr. Stepak applied, that class consisted of 18 blacks and four Hispanics. Thus, there has been a varying

number of minority applications accepted by the School for the last several years and the School has not established a quota for minority applicants.

5. However, in weighing the factors considered during the review process, such as academic performance and leadership potential, race is taken into consideration. For example, a black applicant who pulled himself or herself out of the ghetto may have demonstrated a level of perseverance and ability not reflected in raw test scores. Thus, consideration of race assists the Admissions Committee in evaluating the individual attributes of an applicant and selecting a student body with the most promise and diversity.

6. Moreover, the College, which is centered in a community with a large minority population and attempts to serve the needs of that population, has a strong commitment to affirmative action. The Board of Trustees has determined that there should be equal opportunity to admission without regard to, among other things, race or color. In that regard, it is instructive to note that in 1970 a task force of the Association of American Medical Colleges issued a report which noted that blacks constituted 2.2% of the country's doctors and 2.8% of the medical students. Their report further noted that among the factors causing that situation were financial and educational obstacles to minorities, including cultural bias in the MCAT. If academic performance as measured by test scores and MCAT scores were the sole criterion for acceptance, as demonstrated by Exhibit A, many minority applicants would be eliminated. Thus, consideration of race further assists the Admissions Committee in compensating for the cultural bias found by the Association of American Medical Colleges in MCAT scores.

Appendix A

7. It is plain to see that with only 108 available seats and over 2,400 applications, it is impossible to avoid rejecting qualified applicants. The goal of the Admissions Committee, therefore is to insure that all factors which relate to an individual candidate's qualifications to practice medicine are considered before a decision is made.

8. Asar M. Stepak applied for admission to CMDNJ-RMS for classes entering the academic year beginning in September, 1975.

9. For the academic year 1975, admission to CMDNJ-RMS was determined by an Admissions Committee, consisting of 19 members, 17 faculty members and two students.

10. For the 1975 academic year, the admissions process was conducted in the following manner. As Admissions Officer, I performed an initial evaluation of applications for admission and invited for interview those applicants who demonstrated evidence of high achievement in all categories. The remaining applications, approximately 2000 in number, were transmitted to members of the Admissions Committee for a determination as to which of those applicants should be interviewed. Mr. Stepak's application was among those which I selected for an automatic interview, and it was transmitted to the Admissions Committee for such an interview.

11. As to initial screening by the Admissions Committee of those who were not selected for an automatic interview, the applications forwarded to the Committee by me were first reviewed by one member of the Committee. At that point in the process, a member could recommend granting

an interview, holding an application for later interview or rejecting an application. If that member recommended an interview, then an applicant was automatically invited for an interview. On the other hand, if that member recommended against an interview, the application was reviewed by a second member of the Admissions Committee. If that member recommended an interview, the application was transmitted to the Chairperson of the Admissions Committee who decided whether an interview was to be granted. All interviews were conducted by members of the Admissions Committee.

12. As to the interview process, as noted earlier, applicants invited for an interview were interviewed by a member of the Admissions Committee. The interviewer attempted to assess both the objective and subjective variables considered by the Admissions Committee. Both the interviewer and the applicant had the option to request another interview if either was dissatisfied. Immediately after an interview, the interviewer was required to prepare a written evaluation of the applicant and that written evaluation became an additional document relied upon by the Admissions Committee in rating an applicant. Mr. Stepak was interviewed on January 19, 1975. On February 13, 1975, he requested a second interview so he could ". . . explain more fully certain aspects of my application." On February 21, 1975, Mr. Stepak received a second interview.

13. After an interview and after an application was complete, the Admissions Committee reviewed and ranked all applicants. Ranking was achieved in the following manner: three members of the Admissions Committee reviewed an application and rated it on a scale of one

to ten, with ten representing the top score. Those three scores were then averaged with a similar ranking assigned to an applicant by the interviewer and the result became the applicant's benchmark score. In 1975, the Admissions Committee initially decided to accept any New Jersey applicant with a benchmark score of 8.5 or higher. It further determined to reject any applicant with a benchmark score of 8.0 or lower. Later during the year, it became apparent that there were not enough positions in the class to accept all residents with a score of 8.5 or better, and, at that time, those who had not yet been accepted were placed on an alternate list. In 1975, no applicant with a score of less than 8.5 was accepted. In this regard, Mr. Stepak received a benchmark score of 6.0 and his application was rejected.

14. It is instructive to note that even if every minority applicant was removed from the accepted and alternate lists, the plaintiff would still not have been accepted. In 1975, there were 153 people placed on the alternate list. Of those people, 135 were nonminority and 18 were minority applicants. In addition to the applicants on the alternate list, there were 562 candidates who scored higher than the plaintiff, including 46 minority applicants, and who were rejected without placement on the alternate list. Thus, even if the College accepted no minority applicants, the plaintiff's application would not have been reached.

15. Thus, the procedures for admission to CMDNJ-RMS are intended to insure that the individual attributes of an applicant are given consideration. As noted earlier, not every qualified applicant can be accepted and the goal of the Admissions Committee is to insure that all relevant factors are considered before a decision is made.

Appendix A

16. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

s/ _____

MARY J. GREEN

Dated: December 21, 1979

APPENDIX B

Order to Dismiss of the Superior Court of New Jersey, Middlesex County

(Filed—January 14, 1980)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—MIDDLESEX COUNTY

DOCKET No. L-41916-76

Civil Action

ASAR M. STEPAK,

Plaintiff,

vs.

RUTGERS MEDICAL SCHOOL, A DIVISION OF THE COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY, RUTGERS, THE STATE UNIVERSITY and THE STATE OF NEW JERSEY, jointly, severally and/or in the alternative,

Defendants.

The above-entitled matter having come on for trial on the 14th day of January, 1980, and neither the plaintiff or attorney appearing to prosecute the same:

It is, thereupon, on the 14th day of January, 1980, ORDERED that the above-entitled action be and same is hereby dismissed, and a copy of this Order shall be mailed to all counsel.

s/ _____

JOHN G. DEMOS, A.J.S.C.